STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of A.B., a/k/a A.C., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DAVID BENNETTE, JR.,

Respondent-Appellant,

and

JOLENE WILLISON,

Respondent.

UNPUBLISHED
April 17, 2003

No. 244139
Kent Circuit Court
Family Division
LC No. 97-031002-NA

Before: Talbot, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Respondent father, David Bennette, Jr.,[1] appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(i) (the conditions that led to adjudication continue to exist) and (g) (failure to provide proper care and custody). We affirm.

Respondent first argues that the trial court erred in failing to timely rule on his motion for appointment of counsel pursuant to MCR 5.915.[2] We disagree. "The interpretation and application of court rules are questions of law that we review de novo. Likewise, to the extent

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[1] The parental rights of respondent mother, Jolene Willison, were also terminated. However, she has not appealed.

[2] We note that since this case was decided by the trial court, the court rules governing child protective proceedings have been revised and reorganized. These changes were adopted by our Supreme Court on February 4, 2003, and become effective on May 1, 2003. We also note that the outcome of this case with respect to the issue of court-appointed counsel would be the same under the revised rules.

that resolution of this issue implicates constitutional due process concerns, our review is de novo." *In re P.A.P.*, 247 Mich App 148, 152; 640 NW2d 880 (2001) (citations omitted).

A respondent in a child protective proceeding is entitled to a court-appointed attorney if the respondent is financially unable to retain counsel. MCL 712A.17c(5); MCR 5.915(B)(1). "Respondent" is defined as "the *parent* who is alleged to have committed an offense against a child *or* as defined in MCR 5.974(B)." MCR 5.903(C)(8) (emphasis added). MCR 5.974(B) defines "respondent" as "(1) the natural or adoptive mother of the child, and/or (2) the father of the child *as defined by MCR 5.903(A)(4)*." A "parent" is defined by MCR 5.903(A)(12) as "a person who is legally responsible for the control and care of the minor, including a mother, father, guardian . . . ." "Father" is defined in MCR 5.903(A)(4) as:

> (a) a man married to the mother at any time from a minor's conception to the minor's birth unless the minor is determined to be a child born out of wedlock;
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> (b) a man who legally adopts the minor;
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> (c) a man who was named on a Michigan birth certificate for a minor born after July 20, 1993, as provided by MCL 333.21532; or
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> (d) a man whose paternity is established in one of the following ways within time limits, when applicable, set by the court pursuant to this subchapter:
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> (i) the man and the mother of the minor acknowledge that he is the minor's father by completing and filing an acknowledgement of paternity. The man and mother shall each sign the acknowledgement of paternity in the presence of 2 witnesses, who shall also sign the acknowledgement, and in the presence of a judge, clerk of the court, or notary public appointed in this state. The acknowledgement shall be filed at either the time of birth or another time during the child's lifetime with the probate court in the mother's county of residence or, if the mother is not a resident of this state when the acknowledgement is executed, in the county of the child's birth.
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> (ii) the man and the mother file a joint written request for a correction of the certificate of birth pertaining to the minor that results in issuance of a substituted certificate recording the birth;
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> (iii) the man acknowledges that he is the minor's father by completing and filing an acknowledgement of paternity, without the mother joining in the acknowledgment if she is disqualified from signing the acknowledgement by reason of mental incapacity, death, or any other reason satisfactory to the probate judge of the county of the mother's residence or, if the mother is not a resident of this state when the man signs the acknowledgement, of the county of the minor's birth.
>
> (iv) a man who by order of filiation or by judgment of paternity is determined judicially to be the father of the minor.

In this case, the record does not indicate whether respondent was recognized as the child's *legal* father before the termination hearing commenced. Although respondent was identified merely as the child's "father" in various pieces of documentation, there is no indication that the parties or the trial court employed any of the means necessary to identify the child's legal father before the hearing. Instead, the issue of paternity was only raised at the hearing to terminate respondent's parental rights. At that time, respondent made an admission under oath that he was the child's father in exchange for immunity from prosecution for impregnating the mother when she was thirteen years old. However, the fact that this exchange occurred does not bear on the issue whether respondent had previously been identified as the child's legal father.

Thus, whether respondent was entitled to an attorney before the termination hearing depends on whether respondent was established as the child's legal father at the time, a matter we are unable to determine on the record before us. If respondent was not the child's legal father, then he was not entitled to counsel and no error occurred. MCR 5.903; MCR 5.974; see also *In re Gillespie*, 197 Mich App 440; 496 NW2d 309 (1992); *In re Montgomery*, 185 Mich App 341; 460 NW2d 610 (1990). However, we hold that even if respondent was the child's legal father and the delay in appointing counsel was erroneous, the error was harmless because respondent failed to demonstrate prejudice caused by the delay. See *In re Hall*, 188 Mich App 217, 222-223; 469 NW2d 56 (1991).

Respondent next argues that the trial court erred in denying his motion for an adjournment to allow his attorney more time to prepare for trial. We disagree. We review a trial court's decision on a motion for an adjournment for an abuse of discretion. *In re Jackson*, 199 Mich App 22, 28; 501 NW2d 182 (1993).

In a child protective proceeding, a court may grant an adjournment only on a finding of good cause. The court may not grant an adjournment solely for the convenience of a party. MCL 712A.17(1). To demonstrate that a trial court abused its discretion in denying a request for an adjournment, the respondent must show prejudice resulting from the court's decision. *In re Snider*, 239 Mich App 393, 421; 608 NW2d 502 (2000).

In this case, the record reflects that respondent's attorney filed an appearance three weeks before the termination hearing. Although respondent argues on appeal that this amount of time was insufficient for his attorney to adequately prepare, he does not explain how he was prejudiced by the court's denial of his motion to adjourn. Further, a review of the trial transcripts indicates that respondent's attorney understood the issues in the case and adequately questioned the witnesses. Therefore, because respondent failed to demonstrate any prejudice, he is not entitled to reversal on the basis of this issue. *Id*.

Respondent next argues that the trial court erred by overruling his objection to the admission of hearsay testimony. We agree, but find that the error was harmless because it did not affect respondent's substantial rights. MRE 103; *Temple v Kelel Distributing Co*, 183 Mich App 326, 329; 454 NW2d 610 (1990). Because respondent was not subject to an adjudication, only legally admissible evidence could be used to terminate his parental rights. MCR 5.974(E)(1); *In re C.R.*, 250 Mich App 185, 205; 646 NW2d 506 (2002). Therefore, the trial court abused its discretion in admitting hearsay evidence. Nevertheless, the trial court's findings of fact and conclusions of law indicate that the improperly admitted evidence played no part in

the court's decision. Thus, the error did not affect respondent's substantial rights and does not require reversal. MRE 103; *Temple, supra*.

Finally, respondent argues that the trial court clearly erred in finding that the statutory grounds for termination were proven by clear and convincing evidence. We disagree. The evidence demonstrated that respondent had a considerable criminal history and was incarcerated for the vast majority of the child's life. The evidence also showed that respondent had not seen the child in the three years leading up to the termination hearing and that the most time he spent with her on any one occasion was a matter of hours. In addition, respondent was incarcerated at the time of the hearing, and his release date was uncertain given that he had received two major misconduct violations since his last parole hearing. In sum, the evidence indicated that respondent was unable to provide the safety, stability, and parenting skills required for the child and that he would not be able to do so in the near future. Therefore, the trial court did not clearly err in finding that the statutory grounds for termination set forth in MCL 712A.19b(3)(c)(i) and (g) were proven by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Affirmed.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Peter D. O'Connell